30th Congress, 1st Session. [SENATE.] Rep. Com., No. 65.

IN SENATE OF THE UNITED STATES.

February 11, 1848.
Submitted, and ordered to be printed.

Mr. Downs made the following

REPORT:

[To accompany bill S. No. 146.]

The Committee on Private Land Claims, to whom were referred the memorials of Adelaide Snyder and Henriette Pensoneau, heirs of Jean F. Perry, deceased; John Bleakley, William Bleakley, Nicholas Badiger, and Juliana Bleakley, heirs of Josiah Bleakley; James L. D. Morrison, John M. Morrison, and R. F. Morrison, heirs of Robert Morrison, deceased, and Rital Jarrot and others, heirs of Nicholas Jarrot, deceased, report:

That they have carefully examined the petitions of the respective memorialists, and find that they ask to be allowed to locate lands in the State of Illinois, in lieu of certain lands confirmed to their respective ancestors, by the governors of the northwestern and Indiana Territories, and afterwards withheld from them in consequence of the action of the board of commissioners, convened at Kaskaskia, in the then Illinois Territory, under the authority of the act of Congress of 20th February, 1812, which lands, they allege, have since been disposed of by the United States.

It appears from the memorial of the petitioners, and has been established to the full satisfaction of the committee, by exemplified copies of the patents issued by the governors, orders of survey, and location of claims to land set up by the petitioners, as well as by the report of the commissioners at Kaskaskia, that Governor Arthur St. Clair, whilst governor of the northwestern territory, confirmed and patented to Josiah Bleakley 400 acres of land, being claim 644, section 558, 2d volume, American State Papers, in the State of Illinois, in right of François Sancier, who was the original claimant, in virtue of having cultivated the same under a supposed grant from the French authorities; that William H. Harrison, whilst governor of the Indiana Territory, confirmed to Jean F. Perry, three thousand two hundred acres, being claim number 713, containing four hundred acres, in right of John B. Mercier; number 717, containing four hundred acres, in right of Joseph Petre, alias Gascon, which said two claims are in right of improve- by said Mercier and Petre, alias Gascon; also claims

number 723, four hundred acres, in right of Michael Chartreau; claim 724, four hundred acres, in right of François Delauril; claim 711, four hundred acres, in right of Alphonse Peter; claim 721, four hundred acres, in right of Joseph Rell, sen.; claim 729, four hundred acres, in right of Joseph Rell, jr.; and claim 716, four hundred acres, in right of Jean B. St. Michael; the seven last claims in right of donations made by virtue of acts of Congress to the settlers of Kaskaskia and Vincennes, in the year 1783; also, that he confirmed to Robert Morrison claim number 1,040, containing four hundred acres, in right of improvement made by John Brand; also that he confirmed to Nicholas Jarrot claim number 95, containing four hundred acres, in right of improvement made by Jean B. Barbeau; also claim number 117, containing two hundred acres, in right of Augustine Girardin, sen., and heir of Marie Girardin, which claims contain in the aggregate four thousand six hundred acres of land. The above claims may all be found in the report of the commissioners on private land claims, as contained in the 2d vol. American State Papers, private lands, from page 193 to 206, made under the act of Congress of the 20th February, 1812. The labor of the committee, in the examination of the grounds upon which the respective claimants seek relief, has been greatly lightened and facilitated by a reference to the decision of the supreme court of the State of Illinois in the case of "Doe on the demise of Moon and others *vs.* Samuel Hill," as reported in Breese's "Illinois Report, page 236, a printed copy of which decision has been furnished the committee by the claimants, and is referred to by the committee as an able exposition of the law, bearing upon the claimants' rights, and, to your committee, fully and satisfactorily establishes the legal claims of the memorialists. Your committee can see no injustice which will result to the government by adopting the reasoning and conclusions of the supreme court of the State of Illinois, in the case above alluded to, as having undergone judicial investigation, and which claim is numbered as claim 1,800 in the same report in which the claims of the memorialists are contained, 2d vol. American State Papers, page 193. The opinion of the supreme court is as follows:

JOHN DOE, *ex. dem.*, MOORE and others, plaintiffs,
vs.
SAMUEL HILL, defendant.

(AGREED CASE FROM MONROE.)

OPINION OF THE COURT BY JUSTICE LOCKWOOD.

This is an action of ejectment, commenced in the Monroe circuit court, for the recovery of a tract of land situate in Monroe county. On the trial, a special verdict was found, which contains in substance the following facts: That on the 12th day of February, 1799, Arthur St. Clair, then governor of the territory northwest of the river Ohio, granted his deed of confirmation or patent

to Nicholas Jarrot, to the premises set out in the plaintiff's declaration, which deed of confirmation is as follows, to wit:

"Territory of the United States northwest of the Ohio. *Arthur St. Clair*, governor of the territory of the United States northwest of the Ohio, to all persons who shall see these presents, greeting:

"Know ye, that in pursuance of the acts of Congress of the 20th of June, and 28th of August, 1788, and the instructions to the governor of the said territory, of the 20th of August of the same year, the titles and possessions of the French and Canadian inhabitants, and other settlers in the Illinois country, and at St. Vincennes, on the Wabash, the claims to which have been by them presented, have been duly examined into, and Nicholas Jarrot lays claim to a certain tract or parcel of land, lying and being in the county of St. Clair, and bounded in manner following, to wit: (here the governor's confirmation sets out the boundaries:) to which, for anything appearing to the contrary, he is rightfully entitled, as assignee of Philip Engel. Now, to the end that the said Nicholas Jarrot, his heirs and assigns, may be forever quieted in same, I do, by virtue of the acts and instructions of Congress before mentioned, confirm unto Nicholas Jarrot, his heirs and assigns, the above described tract or parcel of land, lying and being in the county of St. Clair, and containing 778 acres and 131 perches, together with all and singular, the appurtenances whatsoever, to the said described tract or parcel of land, with the appurtenances, to him, the said Nicholas Jarrot, to have and to hold, to the only proper use of the said Nicholas Jarrot, his heirs and assigns forever; saving, however, to all and every person, their rights to the same or any part thereof, in law or equity, prior to those on which the claim of the said Nicholas is founded.

"In testimony whereof, I have hereunto set my hand, and caused the seal of the territory to be affixed, at Cincinnati, in the county of Hamilton, on the 12th day of February, A. D. 1799, and of the Independence of the United States the 23d.

"ARTHUR ST. CLAIR.

"Registered:

"WM. H. HARRISON,
"*Secretary of the Treasury.*

"Recorded 19th of October, 1804."

The verdict further finds, that on the 2d day of January, 1801, Jarrot conveyed the above mentioned premises, by deed of bargain and sale, to one George Lunceford. That the lessors of the plaintiff are the only heirs at law of said George Lunceford; that the premises mentioned in the governor's confirmation were surveyed by Daniel McCann, who was lawfully authorized to survey such claims, and was afterwards surveyed by Wm. Rector, deputy surveyor of the United States, for the said George Lunceford, prior to the year 1812. The jury also find, that after the above recited confirmation and surveys were made that the board of commissioners at Kaskaskia, who were empowered by the act of Congress,

bearing the 20th day of February, 1812, to revise and re-examine the confirmations to land made by the governor of the northwest territory, did, in pursuance of the said act, after an examination of the said claim, make a report thereon to the government of the United States, whereupon, the government of the United States, by its proper officers, did reject the same.

The jury also found, that the said premises were afterwards exposed to public sale by the government of the United States, and that the defendant, Samuel Hill, became the purchaser of about 320 acres thereof, and has paid therefor, and obtained a patent from the United States.

Now, if the court should be of opinion, that the law of the case is with the defendant, then the jury find him not guilty; but if the court should be of opinion, from the whole statement of facts here found, that the law is in favor of the plaintiff, then the jury find the defendant guilty of the trespass in the declaration mentioned, and assess the plaintiff's damages at one cent. On this verdict, the circuit court rendered judgment for the defendant, and the cause is brought into this court by consent. On the part of the plaintiff, it was contended:

1. That the governor had *full power* to make the confirmation, and thereby a title in fee simple in the premises was vested in Nicholas Jarrot, which no subsequent act of the government of the United States could divest.

2. That Congress had, by their legislation, recognized the confirmations, and thereby, had, if there was any defect of power in the governor, made his acts valid.

On the part of the defendant, it was urged:

1. That the governor had no power to make the confirmation.

2. That he had exceeded his authority.

3. That Congress have the power, admitting the governor acted in pursuance of law, to nullify his acts.

4. That the verdict is defective, because it does not appear that the premises lie within the limits prescribed by the resolution of Congress passed in 1788;

5. Because the verdict does not find that plaintiff had a previous estate for the confirmation to act on.

I propose to examine the correctness of the several positions advanced by the counsel for each of the parties. It was conceded on the argument, that the United States were the original proprietors, and the source from whence the title of both parties were derived to the premises.

It is a principle in the action of ejectment that, let the defendant's title be ever so defective, still it is incumbent on the lessors of the plaintiff to furnish evidence of a good title in themselves. Has such evidence been produced? In order fully to understand the nature of the title exhibited on the part of the lessors, it will be necessary to take a concise view of the history of this country, and the legislation growing out of it.

The whole territory north of the river Ohio, and west of Pennsylvania, extending northwardly to the northern boundary of the

United States, and westwardly to the Mississippi river, was claimed by Virginia to be within her chartered limits, and during the revolutionary war her troops conquered the country, and Virginia came in possession of the French settlements situated on the Mississippi river. New York, Connecticut, and Massachusetts, also claimed portions of the same territory. Other States, whose limits contained but small portions of waste and uncultivated lands, contended that a portion of the uncultivated lands claimed by Virginia, New York, &c., ought to be appropriated as a common fund to pay the expenses of the war. Congress, to compose these conflicting claims and opinions, recommended to the States having large tracts of waste unappropriated lands in the western country, to make a liberal cession to the United States of a portion of their respective claims, for the common benefit of the Union. Virginia, in pursuance of this recommendation, on the 1st of March, 1784, yielded to the United States all her right, title, and claim to the territory northwest of the river Ohio, upon certain conditions.

One of the conditions contained in the deed of transfer from Virginia to the United States, and acceded to by the United States, is as follows: "That the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their *possessions and titles confirmed* to them, and be protected in the enjoyment of their rights and liberties." The acceptance on the part of the United States of the deed transferring this country, imposed on them the duty to have the *possessions and titles* of the inhabitants of the country *confirmed* to them; but no steps were taken by Congress relative to this subject until the year 1788, when George Morgan and his associates presented a memorial to Congress, proposing to purchase a large tract of land in Illinois, on the Mississippi river, including all the French settlements on that river, and the premises in question.

On this memorial, a committee of Congress made a detailed report to that body on the 20th June, 1788, which was agreed to by Congress, and thereby the recommendations of the report became a law; such being the manner in which Congress, under the confederation, enacted laws. See 1st vol. Laws of United States, 580.

The committee in their report say, that "they are of opinion that, from any general sale which may be made of the lands on the Mississippi, there should at least be a reserve of so much land as may satisfy all the just claims of the ancient settlers on that river, and that they should be confirmed in the possession of such lands as they have had at the beginning of the late revolution, which have been allotted to them according to the laws and usages of the governments under which they have respectively settled." The committee, then, recommend that separate tracts be reserved, embracing within their limits all the claims of the inhabitants, as was supposed, for satisfying the "claims of the ancient settlers," and for donations "for each of the families *now living* at either of the villages of the Kaskaskias, La Prairie du Rocher, Kahokia, Fort Chartres, and St. Phillips."

They further recommended "that measures be immediately taken for confirming in their possessions and titles the French and Canadian inhabitants and other settlers on those lands, who, on or before the year 1783, had professed themselves citizens of the United States, or any of them, and for laying off the several tracts which they might rightfully claim within the described limits." The report concludes as follows: "That whenever the French and Canadian inhabitants, and other settlers aforesaid, shall have been *confirmed* in their possessions and titles, and the amount of the same ascertained, and the three additional parallelograms for future donations, and a tract of land one mile square on the Mississippi, extending as far above as below Fort Chartres, and including the said fort, the building and improvements adjoining the same shall be laid off, the whole remainder of the soil, within the reserved limits above described, shall be considered as pertaining to the general purchase, and shall be conveyed accordingly." . "That the governor of the western territory be instructed to repair to the French settlements on the Mississippi, at and above the Kaskaskias; that he examine the titles and possessions of the settlers, as above described, in order to determine what quantity of land they may severally claim, which shall be laid off for them *at their own expense*, and that he take an account of the several heads of families living within the reserved limits, in order that he may determine the quantity of land that is to be laid off in the several parallelograms, which shall be laid off accordingly by the geographer of the United States, or his assistant, at the expense of the United States."

This report was subsequently recommitted to a committee, who, on the 28th of August, 1788, reported to Congress some alterations in the terms of the contract between Morgan and his associates and the United States, but no essential variations were made in relation to the French and other settlers on the land, except as follows: "That in case there are any improvements belonging to the ancient French settlers, without the general reserved limits, the same shall also be considered as reserved for them in the sale now proposed to be made." This report was adopted by Congress. It may be here remarked that the contemplated sale to Morgan and others was never effected. On the report of another committee, instructions were given by Congress to the governor of the western territory, dated 29th of August, 1788, from which I make the following extracts:

"Sir: You are to proceed without delay, except while you are necessarily detained by the treaty now on hands, to the French settlements on the Mississippi river, in order to give despatch to the *several measures* which are to be taken according to the *acts* of the 20th June last, and the 28th inst., of which a copy is enclosed for your information." "When you have examined the titles and possessions of the settlers on the Mississippi, *in which they are to be confirmed*, and given directions for laying out the several squares which the settlers may decide as they shall think best among themselves, by lot, you are to report the whole of your proceedings to Congress."

Whether the governor took any immediate steps to perform the

duties enjoined on him by this letter of instructions and the acts of Congress of the 20th June and 18th of August, 1788, does not appear from the verdict, and I am not acquainted with any public document to ascertain the fact. But, that Congress did not consider that the power of the governor should cease upon his failure to "proceed without delay" to attend to his business, is evident from the act of Congress, entitled "An act for granting lands to the inhabitants and settlers of Vincennes and the Illinois country, in the territory northwest of the Ohio, and for confirming them in their possessions," passed 3d March, 1791.

From a hasty perusal of this act it might be inferred that it was intended as a substitute for the acts of the 20th June, and 28th August, 1788, and consequently, a virtual repeal of them. I am, however, satisfied from a careful perusal of the act, that such was not the intention of Congress, but that this act was intended to embrace cases not included in the former acts, and repeals a part of the act of 28th August, 1788. That this is the object of this act, will appear from the following abstract of the different sections: Section one gives 400 acres to each of those persons, "who, in 1783, were heads of families at Vincennes, or in the Illinois country on the Mississippi, and who since that time have removed from one of the said places to the other." This section gives the donation, notwithstanding a removal from one place to another. By the second section, heads of families at Vincennes and the Illinois country, in 1783, who afterwards removed without the limits of the territory are, notwithstanding, entitled to the donation of 400 acres, made by resolve of Congress, on the 29th August, 1788; and the governor is directed to "cause the same to be laid out for such heads of families, or their heirs, and to cause to be laid off and confirmed to such persons, the several tracts of land which they may have possessed, and which, before the year 1783, may have been allotted to them, according to the laws and usages of the government under which they may have respectively settled. *Provided*, That if such persons, or their heirs, do not return and occupy the said land within five years, such land shall be considered as forfeited to the United States."

One branch of this section gives the donation of 400 acres, notwithstanding the settler had moved out of the territory; and the other branch authorizes a confirmation of lands that may have been possessed, according to the laws and usages, by allotment, but without a legal title to the fee. But in both cases the grant to be forfeited, in case the settler or his heirs do not return and occupy said land in five years.

This section cannot be considered a compliance with the obligation resting on Congress, to *confirm* the French settlers in their *possessions and titles* in pursuance of the deed of cession from Virginia. The confirmation contemplated by the cession, was an absolute assurance of the land to these persons, whether they occupied them or not. The third section of the act relates to other matters.

The fourth section is as follows: "That where lands have been

actually improved and cultivated, at Vincennes, or in the Illinois country, under a *supposed* grant of the same by any commandant or court, claiming authority to make such grant, the governor of said territory be, and he is hereby empowered to confirm to the persons who made such improvements, their heirs or assigns, the lands *supposed* to have been granted as aforesaid, or such parts thereof, as he in his discretion may judge reasonable, not exceeding to any one person 400 acres." This section evidently embraces only such cases as from defect of power in the granting authority, left the settler without any valid title to support his possession; and hence it only operates on cases where the settler had actually improved and cultivated the land, and limits the extent of the confirmation to 400 acres. This, clearly, is not the confirmation contemplated by the deed of cession. The deed of cession intended to secure the inhabitants in their titles, whether they cultivated the land or not, and whatever might be the extent of their claim. This section, then, does not embrace the possessions and titles contemplated by the deed of cession. The 5th, 6th, and 7th sections, relate to other matters.

The eighth and last section repeals "so much of the act of Congress of 28th August, 1788, as refers to the location of certain tracts of land directed to be run out, and reserved for donations to the ancient settlers in the Illinois country; and the governor of the said territory is directed to lay out the same, agreeably to the act of Congress of the 20th June, 1788." This section clearly recognises the act of 20th June, 1788, as in full force. From this review of the act of 1791, it will be perceived that all its provisions are in addition, and not repugnant to, nor in lieu of, the provisions of the act of 20th of June, 1788.

That portion of the act of 1788 that relates to the confirmation of the title of the settlers, was in compliance with the obligation of duty; the act of 1791, was prompted by a spirit of liberality towards persons who had recently, by the fate of war, become subjects and citizens of a government to which they were strangers, and was, no doubt, intended to conciliate and secure their attachment to the United States. If, then, the act of June 20th, 1788, is to be regarded as in force, notwithstanding the act of 1791, what power did it confer on the governor of the northwestern territory? Doubtless, upon the change that was effected in the government when the French settlements were conquered by the troops of Virginia, many fears would be excited in the minds of the inhabitants, that the grants that had been made to them by the French and British governments would not be recognised by their conquerors. To allay any such fears, was probably the reason that induced Virginia to require the confirmations of the titles and possessions of the French settlers; and to effect so desirable an object, some act was required to be performed *in pais*, which could completely quiet all apprehensions. Could this be done by any thing short of an acknowledgement on the part of the United States, that they never would disturb such titles and possessions, as their agent should determine to be valid? A deed of confirmation, or patent,

would release all the interest of the United States in the titles and possessions of the settlers, and answer effectually the wise and benevolent object that Virginia, doubtless, had in view in requiring that the United States should confirm these titles and possessions.

That Congress intended to clothe the governor with power to make confirmations of the possessions and titles of the French inhabitants of the Illinois country, is sufficiently apparent from the language of the acts and instructions of 1788. Should any doubt, however, exist on the subject, the act of 1791, being a subsequent exposition of their intention and meaning, would remove it. By the fourth section of the act of 1791, "where any lands have been actually improved and cultivated at Vincennes, or in the Illinois country, under a *supposed grant* of the same, by any commandant or court claiming authority to make such grant, the governor of the said (northwest) territory, hereby is empowered to confirm to the persons who made such improvements, their heirs or assigns, the lands supposed to be granted as aforesaid, or such parts," &c.

That the governor should be empowered to confirm claims which rested on the liberality of Congress only, and not those founded on previous right, and which the United States were bound to confirm by a solemn compact, is so inconsistent with reason that Congress ought not to be supposed to have intended any distinction. A reference to this statute, being *in pari materia*, is proper to ascertain the probable intention of Congress, if the acts and instructions of 1788 are not sufficiently clear in themselves.

That other statutes on the same subject may be consulted in construing what is doubtful, see 4 Bac. Abr. 647, 1 Kent's Comm. page 433.

The intention of the legislature should also be regarded, though seeming to vary from the letter. 4 Bac. Abr. 643. From the letter and spirit then of the acts of 1788, and the instructions of the same year, it appears sufficiently clear that the governor had power to make deeds of confirmation to the French and other inhabitants of the Illinois country.

These deeds of confirmation must also be considered, at least, as *prima facie* evidence that they were rightfully made. The governor was authorized to confirm to the settlers their possessions and titles, and if his acts are not to be regarded, *prima facie*, as honestly and fairly done, what benefit would result to the settlers?

If, in order to show their deeds of confirmation, they must first give evidence of the title to their land, then the confirmations of the governor would be a farce, and the settlers would have been at the expense of surveying their lands for no useful purpose. But in truth, these confirmations were to be a benefit to the United States, as well as to the settlers. For, by the settlers surveying their lands, and exhibiting their claims to the governor, the United States became apprised of the extent of those claims, and were thus enabled to ascertain what lands remained to them subject to be sold. It was a convenient mode of dividing the lands of individuals from the lands of the nation, and as an inducement for the settlers to survey their claims and adduce their titles to the governor, he was

authorized, should he, upon examination, find them honest and fair to relinquish all claim on the part of the United States to those lands. "A confirmation, at common law, is of a nature nearly allied to a release, and is a conveyance of an estate or right *in esse*, whereby a violable estate is made sure and unavoidable, or whereby a particular estate is increased." 2 Bl. Com, 325. Upon this definition of a confirmation, the *confirmor*, or those claiming under him, would not be permitted to deny the pre-existing estate in the *confirmee*. The *confirmor*, and those claiming under him, would be estopped by his deed. But from an examination of the several acts of Congress relative to governors' confirmations, a higher character has been given them than that of mere confirmations.

By the fourth section of the act, entitled "An act supplementary to an act, entitled, an act making provision for the disposal of the public lands in the Indiana territory, and for other purposes," passed 3d March, 1805, it is enacted, "That the lands lying within the districts of Vincennes, Kaskaskias, and Detroit, which are claimed by authority of French or British grants legally executed, or by virtue of grants issued under the authority of any former act of Congress, by either of the governors of the northwest, or Indiana territories, and which have already been surveyed by a person authorized to execute such surveys, shall, whenever it shall be necessary to re-survey the same for the purpose of ascertaing the adjacent vacant lands, be surveyed at the expense of the United States, any act to the contrary notwithstanding."—3d vol. laws United States, 671. As I have been unable to find any act of Congress which gave to the governors of the northwest territory any power to make "grants," except the acts of 1788, and the act of 1791, I thence infer that the "confirmations," contemplated by those acts, were regarded by Congress in the nature of grants so far as the United States were concerned; and if grants, a subsequent sale of the granted lands by the United States, although followed by a patent, is void. In the act entitled, "An act respecting the claims to land in the Indiana territory and state of Ohio," passed 21st April, 1806, the confirmations authorized by the acts of 1788 and 1791, are called "patents," and this, probably, is the more correct name by which to designate the instrument granted by the governor, under the act of 1788 and 1791.

The second proposition of the plaintiff is, that Congress had recognized by their legislation the confirmations, and thereby had, if there was any defect of power in the governor, made his proceedings valid. The authority of the governor to confirm the titles and possessions of the settlers under the acts of 1788, and the act of 1891, continued until the 26th of March, 1804, a period of nearly sixteen years, when a board of commissioners were appointed to sit at Kaskaskia, to hear proof relative to British and French grants, and report to the Secretary of the Treasury.

This board virtually superseded the powers of the governor. But nothing appears from the acts of Congress, in disapprobation of the proceedings of the governor, until the passage of an act on the 20th February, 1812, which authorized the register and receiver, of

the land office at Kaskaskia, and another person to be appointed by the President of the United States, to examine and inquire into the validity of claims to land in the district of Kaskaskia, which are derived from confirmations made, or pretended to be made, by the governor of the northwest and Indiana territories respectively, "and they shall report to the Secretary of the Treasury, to be laid by him before Congress at their next session, their opinion on each of the claims aforesaid." It will be recollected, that the governor was directed, by the instructions of the 29th August, 1788, to report his proceedings to Congress, and it is fair to presume, that he kept Congress, from time to time, advised of his doings, for Congress had the subject repeatedly before them, and passed several acts, which, if they do not expressly sanction the proceedings of the governor, do so impliedly; at all events, as the governor continued to act for so long a period, with at least the tacit approbation of Congress, and his acts, remaining unimpeached for a period of more than twenty years from the time his authority commenced, and the lessor's ancestor being an innocent purchaser, the soundest principles of policy, as well as good faith, require that the governor's "confirmations" should be considered, at least, *prima facie*, valid. Upon both grounds, then, the plaintiffs are entitled to recover, unless the defendant has shown an older title derived under a French or British grant, or some fact that will invalidate the deed of confirmation offered in evidence on the part of the plaintiffs. The first objection urged against the plaintiff's right to recover, is that the governor had no power to make the confirmation. But if the views above taken are correct, the governor was authorized by the resolutions and instructions of June and August, 1788. The second objection is, that the governor exceeded his authority. It was urged in support of this objection, that if the governor had power to *confirm*, he was limited to 400 acres.

From the review, however, of the act of 1791, it appears that the limitation of 400 acres, applies only to donations and defective claims, and not to confirmations of valid pre-existing rights. The third objection is, that Congress have the power to nullify the acts of the governor, admitting he had power to make confirmations.

This position is too outrageous in a government of laws to merit any consideration. Congress have not, however, exercised any such power. The act of 1812 only authorized the register and receiver to inquire into the validity of the governor's confirmations, and were to report their opinion to the Secretary of the Treasury, who was to lay the same before Congress, and it does not appear Congress ever passed any law on the subject of those confirmations, on which the commissioners reported an unfavorable opinion. The Secretary of the Treasury, however, considered these confirmatrons void, and directed the sale of the land. But the secretary had no power to order the sale of any lands, except those belonging to the United States. If the governor's deeds of confirmation, or patents, were obtained by fraud or misrepresentation, the deed of confirmation or patent is good, until set aside by due course of law. The remedy of the second patentee, in such cases, is *scire*

facias, or a bill, or information in a court of chancery. See the case of *Jackson* v. *Lawton*, 10 Johns. Rep. 23, where it was decided, that "if a patent has been issued by fraud, or on false suggestion, unless the fraud or mistake appears on the face of the patent itself, it is not void, but voidable only, by suit for that purpose." The fourth objection is, that the verdict is defective, because it does not appear that the premises lie within the limits prescribed by the resolutions of Congress, passed in 1788." The answer to this objection is, that such proof was unnecessary, for by the resolution of 28th August, 1788, the improvements of the settlers "were reserved for them," whether "the improvements were within, or without, the reserved limits."

The last objection is, that the verdict does not find that the confirmee had a previous estate in the premises for the deed of confirmation to act on.

I am clearly of opinion, for the reasons heretofore given, that the confirmation was a release of the interest of the United States, and that the presumption was, that the deed of confirmation was made in a case authorized by the resolutions of June and August, 1788. If the governor's patent is to be considered as a technical deed of confirmation, then the confirmor, and all claiming under him, are estopped. Upon the whole, the law arising on the special verdict, being in favor of the lessors of the plaintiff, the judgment of the circuit court must be reversed with costs, and the cause remanded to the circuit court of Monroe county, with directions to enter judgment for the plaintiffs agreeably to this opinion, and the circuit of Monroe county will make such order in relation to improvements on the premises, if any there are, as the statute and the facts of the case will warrant.—*Judgment reversed.*

If the above decision is sound (which your committee believe) upon the legal questions growing out of the legislation of Congress, upon the subject of confirmations made by the governors of the northwest and Indiana territories to the settlers at Kaskaskia and Vincennes, in conformity with the obligations resting upon the United States, under the cession from Virginia, to "confirm the French and Canadian settlers in their possessions," then the justice of the memorialists' claims is very apparent; and in view of the facts that the government has since sold the lands embraced in the said claims to persons, many of whom, as your committee are informed and believe, now occupy them, and have made valuable improvements thereon, which would have to be paid for by the successful claimant, under the governor's confirmations, upon a recovery at law of said lands; and the government would be bound in justice to pay to the second purchaser, or patentee, the consideration paid for said lands to the United States by them respectively, in some instances at the rate of two dollars per acre, they have concluded that the interest of the second patentee, as well as those of the government, would be advanced by granting the prayer of the petitioners, and allowing them to locate other lands in lieu of those confirmed to their ancestors by the governors of the north-

west and Indiana territory. In arriving at this conclusion, your committee are not singular. Claims of like character have been before Congress as often as four times, and in every instance, upon investigation, have been favorably reported upon. The Senate is referred to the able report of Mr. Burnet, communicated to the Senate January 5, 1830, 5th vol. Am. St. papers, page 348, in which this peculiar class of claims is treated with great ability and fairness. Again on the 2d July, 1836, a law was passed confirming to the executors of James O'Harra, late of Pittsburgh, Pennsylvania, six thousand six hundred acres of land, in lieu of governor's confirmations made to James O'Harra, and rejected by the same board of commissioners, and contained in the same report with the claims of the memorialists. Your committee have not entered into a full exposition of the laws bearing upon the claims of the memorialists, satisfied with referring the Senate to the decision of the supreme court of Illinois, and to the act of Congress above referred to. They will conclude this report by stating, however, that no fraud was imputed to either of the claimants in the cases set out in their memorials, by the board of commissioners, who reported them "unsupported by proof before them." The committee are unanimously of opinion that the claims of the memorialists should be confirmed, and that they should be permitted to locate other lands in lieu of those confirmed to their respective ancestors, by the governors of the northwest and Indiana territories, and withheld from them in consequence of the report of the commissioners at Kaskaskia, under the act of February 20, 1812, and report a bill for that purpose.